

III. REMARKS

Claims 1-28 are pending in this application. By this response, claims 1, 8, 19 and 24 have been amended. Applicants are not conceding in this application that those claims are not patentable, as the present claim amendments are only for facilitating expeditious prosecution of the allowable subject matter noted by the examiner. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

Initially, Applicants thank the Examiner for the telephone interview with their representative, Darrell L. Pogue, Reg. No. 57,878. During the interview, the independent claims were discussed with respect to their corresponding rejections. No exhibits were presented and no agreement was reached. The substance of the interview is incorporated in the following remarks.

In the Office Action, claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. Office Action, p. 2. In response, Applicants have amended claim 1 to recite, *inter alia*, “outputting the TMU to a system capable of optimizing the MSUT.” (See claim 1, and as similarly recited by claims 8, 19 and 24). As agreed upon by the Examiner during the telephone interview, amended claims 1, 8, 19 and 24 provide a useful, concrete and tangible result and are statutory under 35 U.S.C. 101. Accordingly, Applicants respectfully request withdrawal of the rejection.

In the Office Action, claims 1-28 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-30 of co-pending Application No. 11/062,668. In response, Applicants have filed a terminal disclaimer herewith to overcome the provisional rejection. Applicants are not conceding in this application that the claims are not patentably distinct, as the terminal disclaimer is only for facilitating expeditious prosecution of the allowable subject matter noted by the examiner. Applicants

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respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

/Darrell L. Pogue/

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